

REMARKS

The Office Action of January 21, 2006, requires a showing as to why new claims 30 - 35 do not contain new matter, and why they are patentable over the prior art.

Claim 30 is similar to allowable claim 26, and is reproduced below with the recitations in claim 30 that are not in claim 26 in italics followed by comments in parenthesis as to where the subject matter is disclosed.

30. (new) A fitting for attaching ENT tubing to a surface comprising:
a molded plastic body having an inverted generally cup-like configuration;
said body having a body wall forming an internal cavity with a bottom opening;
an attachment flange extending outwardly from said body wall around said bottom opening, said flange having a plane outer surface *that defines a terminal end of said fitting*;
(FIGS. 2, 4 and 7 show plane outer surface 20 of flange 18 to be a terminal end of fitting A, and FIGS. 13 and 15 show plane outer surface 78 of flange 74 to be a terminal end of fitting B)
a socket extending through said *body* wall into said cavity for receiving an end portion of an ENT tube;

said plane outer surface of said attachment flange being securable against a support surface with said socket opening outwardly away from the support surface for receiving an end portion of an ENT tube and with the bottom opening being closed by the support surface; (Lines 10 - 14 on page 4 and 7 - 12 on page 6 describe the flanges 18, 74 as being secureable against a flat surface of a concrete form. Lines 5 - 7 on page 4 indicate that the fitting is for attaching ENT tubing to a concrete form. Lines 20 - 24 on page 7 explain that the ENT tube is held in the fitting socket while concrete forms and reinforcing bars are readied for pouring concrete, and

during pouring of concrete. The other recitations are plain, implicit and inherent from the drawing and disclosure).

said socket having a longitudinal socket axis intersecting said bottom opening;

said socket having a plurality of circumferentially-spaced resilient fingers extending *into said cavity and having finger terminal ends spaced from said bottom opening*; (Lines 15 - 21 on page 4 and 13 - 20 on page 6 explain that the socket extends into the cavity. The fingers are part of the socket and it necessarily follows that the fingers also extend into the cavity. FIGS. 4, 7, 15, 19 and 20 show the ends of the fingers to be spaced from the bottom opening in the fitting)

said body wall being continuous and free of openings therethrough around said socket, including around said socket fingers, to preclude entry of poured concrete into said socket and said cavity through said body wall; (FIGS. 1 - 20) and

said cavity, said body wall and said socket being configured to provide insertion of an ENT tube into and through said socket past said finger terminal ends into engagement with a support surface that overlies said bottom opening when said plane outer surface of said flange is positioned against the support surface for supporting the fitting thereon. (FIGS. 19 and 20.

Lines 19 - 28 on page 7, and lines 1 and 2 on page 8)

Comments on claims 31 - 35 follow:

Claim 31 -- see original claim 5, the last two lines on page 5 and the first two lines on page 6.

Claim 32 -- see original claim 14. Lines 16 and 17 on page 5.

Claim 33 -- Lines 13 and 14 on page 6.

Claim 34 -- Lines 18 and 19 on page 4. Line 17 on page 6. Lines 1 - 3 on page 5. FIGS. 1 - 20.

Claim 35 -- FIGS. 1 - 20.

Amended material that is inherently contained in the original application cannot constitute new matter. Koito Mfg. Co. v. Tum-Key Tech, LLC, 381 F.3d 1142, 1154 (Fed. Cir. 2004), citing Schering Corp. v. Amgen Inc., 222 F.3d 1347, 1352 (Fed. Cir. 2000). Drawings can be sufficient to meet the written description requirements of 35 U.S.C. §112. See Lamps Plus, Inc. et al. v. Patrick S. Dolan et al., 2006 WL 133469, page 3 (Fed. Cir. 2006), citing Koito.

"[T]he specification need not describe the claimed subject matter in exactly the same terms as used in the claims; it must simply indicate to persons skilled in the art that as of the [filing] date the applicant had invented what is now claimed." All Dental Prodx, LLC v. Advantage Dental Products, Inc., 309 F.3d 774, 779, (Fed. Cir. 2002), citing Eiselstein v. Frank, 52 F.3d 1035 (Fed. Cir. 1995). All Dental further provides: "However, the failure of the specification to specifically mention a limitation that later appears in the claims is not a fatal one when one skilled in the art would recognize upon reading the specification that the new language reflects what the specification shows has been invented." All Dental at 779.

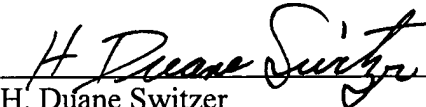
The claimed subject matter is disclosed in the specification and drawings, or is plain, implicit or inherent from the specification and drawings. It would be abundantly clear to a person of ordinary skill in the art that the inventors were in possession of the claimed subject matter as of the application filing date. The original application supports the amended material, and clearly enables any person skilled in the art to make and use the claimed invention.

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Reply to Office Action of Jan. 21, 2006

The claims are patentable because the references do not disclose or suggest a fitting that is suitable for use in poured concrete construction. U.S. Patent No. 6,199,918 to Gerich does not disclose a flange at one end of a fitting that can be attached against a flat surface of a concrete form. The teeth in Gerich that cooperate with the ENT tube would be penetrated and surrounded by concrete so that the fitting could not be removed from the poured concrete, and the ENT tube would be locked in the socket by the concrete that penetrated the socket through the finger openings.

No reference discloses or suggests the claimed fitting that enables it to be used in a poured concrete construction while remaining separable from the cured concrete so that the ENT tube can properly be connected with other devices. The art does not disclose or suggest a fitting that can be attached to a concrete form to hold an ENT tube in position while concrete is poured around and over it.

Respectfully submitted,


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